

**IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**BILLIE MERCER, Individually and as Heir
to the ESTATE OF LARRY JACKSON, JR.;
and LARRY MERCER, Individually, and as
Heir to the ESTATE OF LARRY
JACKSON, JR.**

v.
Plaintiffs,

**CHARLES KLEINERT and.
THE CITY OF AUSTIN,**

Defendants.

Civil Action No. 1:13-cv-00830

PLAINTIFF'S AMENDED COMPLAINT IN INTERVENTION

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Intervenor, Kirsten Jackson, files this amended complaint in intervention as a Plaintiff, as authorized by Federal Rule of Civil Procedure 24.

A. PARTIES

1. Intervenor Kirsten Jackson is the widow of Larry Jackson Jr. She brings her claim in her individual capacity as a statutory wrongful death beneficiary and as an heir to the Estate of Larry Jackson, Jr. pursuant to the Texas Civil Practices and remedies Code §§71.002 *et. seq.* and §§71.021.

1(a). Kirsten Jackson would also show that she is a party to Cause No. C-1-PB-14-001027 styled *In re Estate of Larry Jackson, Jr., Deceased* pending in the Travis County Probate Court. There is currently a motion pending in that case to appoint John Crane, an Austin Attorney, as administrator of Larry Jackson's Estate. Upon appointment of a person to administer Larry

Jackson's Estate, be it John Crane, or someone else, Kirsten Jackson requests that this person be joined as a party plaintiff to the case.

2. Defendant Charles Kleinert is a retired Austin Police Department detective and may be served through his attorney, Robert-Icenhauer Ramirez, at 1103 Nueces Street, Austin, Texas 78701. He is being sued in his individual capacity.

3. Defendant the City of Austin is a municipality organized under the laws of Texas and operates the Austin Police Department ("APD"). It may be served through its lawyer Dan Richards, Richards Rodriguez and Skeith LLP, 816 Congress Avenue, Suite 1200, Austin, Texas 78701.

3(a). Intervenor would further show that Charles Kleinert was acting in addition to his role of Austin Police Officer, as a Federal Officer, as part of the Central Texas Violent Crimes Task Force. Particularly, as noted in the Court's Opinion in Cause No. A-14-CR-388-LY, Kleinert, at the time he shot Jackson, was deputized by both the FBI and the United States Marshall's [and] was a "Special Federal Officer/ Special Deputy U.S. Marshall." Accordingly, Intervenor intends to file a FTCA claim in addition to this lawsuit. Upon exhaustion of Intervenor's FTCA administrative remedies, Intervenor will at that time seek to join the United States as a party defendant, in either the present case, or a separate case.

B. ORIGINAL LAWSUIT

4. Plaintiffs, Billie Mercer and Larry Mercer, sued defendants Charles Kleinert and The City of Austin, under a 42 U.S.C. §1983. Defendant, Kleinert filed an answer asserting the affirmative defenses of qualified immunity, Texas Tort Claims Defense, and contributory negligence. Defendant, The City of Austin filed an answer asserting the affirmative defense of sovereign immunity, the Texas Tort Claims Act Defense, contributory negligence, qualified or

official immunity of behalf of the Defendant, Kleinert, and that Plaintiff Larry Mercer lacks standing to bring suit.

C. INTERVENOR'S CLAIMS

5. Intervenor has claims for the wrongful death of Larry Eugene Jackson Jr., which resulted from the Defendants' violations of Mr. Jackson's rights under 42 USC §1983, as more fully described in Plaintiffs' Original Complaint, the allegations of which are adopted as if fully set forth herein. Further, Intervenor would show that the Estate of Larry Jackson has claims for Mr. Jackson's pain and suffering, death and funeral expenses, which should be pursued by the duly appointed representative of his estate.

6. In accordance with FRCP 10(c) Plaintiff hereby adopts by reference paragraphs 6 through 45 of Plaintiffs' Original Complaint.

D. DAMAGES

7. As a result of Defendants' conduct as set of in Plaintiff's Original Complaint, Intervenor has suffered pecuniary loss, loss of companionship and society, and mental anguish, both in the past and future.

8. Additionally, Intervenor is entitled to recover her lawful portion of survival damages awarded to the Estate of Larry Eugene Jackson, which include physical pain and mental anguish, medical expenses and funeral and burial expenses.

E. EXEMPLARY DAMAGES

9. Because Kleinert's actions were committed either intentionally or recklessly, Intervenor seeks the imposition and recovery of exemplary damages against the Defendant Kleinert.

F. ATTORNEYS FEES

10. Intervenor also seeks the recovery of attorneys fees pursuant to 42 U.S.C. Sec. 1988.

G. JURY REQUEST

11. Plaintiff has previously requested a jury, and Intervenor joins in that request.

E. PRAYER

12. For these reasons, Intervenor asks that on final hearing, she be awarded a judgment against Defendants for:

- a. compensatory damages, and exemplary damages;
- b. attorney's fees, including expert fees, under 42 U.S.C. §1988;
- c. pre-judgment interest and post-judgment interest at the highest rate allowable under the law;
- d. all costs including, but not limited to, any expert fees; and
- e. all other relief in equity or in law to which Plaintiffs may be entitled.

Respectfully submitted,

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ATTORNEY FOR INTERVENOR

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument has been served on all counsel of record this **21st** **DAY OF JULY 2015** pursuant to the Federal Rules of Civil Procedure.

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